



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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Release Date: 8/13/2010

Date: 5/18/2010

Contact Person:

Contact's Identification Number:

Telephone Number:

Employer Identification Number:

UIL: 4945.00-00

Legend:

S =

Dear :

We have considered your ruling request regarding approval of your scholarship grant procedures as required by section 4945(g) of the Internal Revenue Code ("Code").

Facts:

You are exempt from federal income tax under section 501(c)(3) of the Code and are classified as a private foundation under section 509(a). Your scholarship grants program will be for students to attend accredited universities and colleges. Your scholarship program is not related to any employment of the parents or the students and is not an employer-related scholarship program. However, the scholarships are for the benefit of customers and dependents of your customers who are committed to community service. Grantees will be selected by S, an organization exempt from federal income tax under section 501(c)(3) and classified as other than a private foundation pursuant to sections 509(a)(1) and 170(b)(1)(A)(vi). S evaluates scholarship applications for numerous private foundations under a scholarship grant procedure approved by the Internal Revenue Service under section 4945(g). S will select your scholarship grantees from the children of all of the customers of a power company serving the general public in multiple states. Such grantees are selected from that open-ended class of eligible students. S will use pertinent criteria, such as grades, test scores, recommendations, and achievements in awarding such scholarship grants. The scholarship program does not involve any financial needs analysis of your customers or their children. You have represented that the grantees will not include any of your private foundation's disqualified persons under section 4946. The scholarship grants will be paid directly to the each grantee's educational institution described in section 170(b)(1)(A)(ii) earmarked for the grant's scholarship purpose, which is the payment manner described in section 53.4945-4(c)(5) of the Foundation and Similar Excise Tax Regulations ("regulations").

Ruling Requested:

You have submitted a request for the approval of your scholarship grant procedures under section 4945(g)(1) of the Code.

Law:

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or educational purposes.

Section 509(a) of the Code provides that certain organizations exempt from federal income tax under section 501(c)(3) are private foundations subject to the provisions of Chapter 42 of the Code.

Section 4941 of the Code, in general, provides for excise tax on, and requires correction of, any use of a private foundation's assets for the benefit of any disqualified person as defined in section 4946.

Section 4945 of the Code imposes excise tax on a private foundation's making of any "taxable expenditure" as defined, in pertinent part, by sections 4945(d)(3) and 4945(d)(5).

Section 4945(d)(3) of the Code provides that a taxable expenditure includes an amount paid by a private foundation as a grant to an individual for study or other similar purposes by such individual, unless the grant meets the requirements under section 4945(g) of the Code for approval in advance by the Service.

Section 4945(g)(1) of the Code provides that a taxable expenditure under section 4945(d)(3) does not include any grant to an individual for study if the grant is made under a procedure approved in advance by the Service, constitutes a scholarship under section 117(a) of the Code (as in effect on the day before the Tax Reform Act of October 22, 1986), and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii).

Section 4946 of the Code indicates, in part, that a disqualified person is a substantial contributor, a director, an officer, or a manager of the private foundation. Further, section 4946(a)(1)(D) provides that a disqualified person includes the family of a disqualified person defined under section 4946(d) including spouse, ancestors, children, grandchildren, great grandchildren, and spouses of children, grandchildren, and great grandchildren.

Section 53.4945-4(d)(3) of the regulations provides that if, by the 45th day after a request for approval of grant procedures has been properly submitted to the Internal Revenue Service, the private foundation has not been notified that its grant-making procedures are not acceptable, its grant-making procedures shall be considered as approved from the date of submission of its request for approval until receipt of actual notice from the Internal Revenue Service that such procedures do not meet the requirements of section 4945(g) of the Code.

Section 53.4945-4(b) of the regulations requires that grantees under section 4945(g) of the Code must be selected on an objective and non-discriminatory basis. The group of eligible grantees must be broad enough to enable the giving of the grants to achieve an exempt purpose. The criteria for selection of grantees must be related to the exempt purpose of the grant. The persons selecting the grantees must not be in a position to derive a private benefit, directly or indirectly, if certain potential grantees are selected over others.

Section 53.4945-4(c)(2) of the regulations provides that, at least once per year, the private foundation must obtain a reporting, verified by the educational institution, on the grantee's progress for each academic period.

Section 53.4945-4(c)(4) of the regulations provides that, if grantee reports submitted or other information, including failure to submit reports, indicate that any part of a grant is not being used for purposes of the grant, the grantor foundation is under a duty to investigate and, while conducting its investigation, must withhold further payments. The grantor's reasonable steps to recover misused grant funds must include legal action where appropriate, unless legal action would not, in all probability, result in satisfaction of execution on the judgment.

Section 53.4945-4(c)(5) of the regulations provides that the annual report under section 53.4945-4(c)(2) and the duty to investigate under section 53.4945-4(c)(4) of the regulations can also be met if the grantor pays the scholarship grant under section 4945(g)(1) of the Code to the grantee's educational institution which agrees to use the grant funds only if the grantee is enrolled at such educational institution and the grantee's standing is consistent with the purposes and conditions of the grant.

Section 53.4945-4(c)(6) of the regulations provides that the grantor private foundation must retain adequate records on all of its grants to individuals for study or similar purposes under section 4945(d)(3) of the Code. Such records include: all information which the foundation secures to evaluate the qualifications of potential grantees; identification of all grantees (including any relationship of a grantee to the grantor foundation sufficient to assure that such grantee is not a disqualified person under section 4946 of the Code); specification of the amount and purpose of each grant; and the follow-up information which the grantor obtains from the grantees under sections 53.4945-4(c)(2) and 53.4945-4(c)(4) of the regulations, cited above.

Revenue Ruling 79-131, 1979-1 C.B. 368, indicates that the employer-related scholarship guidelines of Revenue Procedure 76-47, 1976-2 C.B. 670, do not apply to a private foundation's scholarship program for the general public or the community at large even if some children of employees of a donor company happen to qualify for scholarships as part of the general public.

#### Analysis:

Your selection of scholarship grantees, as performed for you by the public charity S will use objective pertinent criteria, such as grades, test scores, and activities. The pool of applicants is all the qualified children of all of the customers of a large multiple state power company so that the class of your grantees is a broad segment of the general public and will remain so continuing into the future. Your program is not an employer-related program giving preference to any company's children or employees. Your administration of the grant payments meets the requirement for proper supervision of payments because you will pay the scholarship grants directly to each grantee's educational institution described in section 170(b)(1)(A)(ii) of the Code and in the manner meeting section 53.4945-4(c)(5) of the regulations. You represent you will keep adequate records of your selections and payments and that grantees will not be disqualified persons under section 4946 as to your private foundation.

#### Conclusion:

Based upon the information submitted, your scholarship grants will be for students for their education at educational institutions described in section 170(b)(1)(A)(ii) of the Code and, assuming that your program will be conducted as proposed with a view to providing objectivity and nondiscrimination in the awarding of grants, we rule that your procedures in the awarding of your scholarship grants comply with the requirements of section 4945(g)(1) of the Code and, thus, your expenditures made in accordance with these procedures will not constitute "taxable expenditures" by your private foundation within the meaning of section 4945(d)(3). As required by section 4945(g)(1), your scholarship grants will be eligible for the exclusion from income under section 117 of the Code to the extent that such grants are actually used for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code.

This ruling letter is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be made to your organization's creators, officers, directors, trustees, or members of the selection committee, or for any purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

This approval of your grant-making procedures is a one-time approval of your system of standards and procedures for selecting recipients of grants that meets the requirements of section 4945(g)(1) of the Code. This approval will apply to succeeding grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

This ruling letter will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions, which we intend to make available for public inspection, is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Because this ruling letter could help to resolve any questions about your status, please keep it in your permanent records.

Sincerely,

/s/

Ronald J. Shoemaker  
Manager, Exempt Organizations  
Technical Group 2

Enclosure: Notice 437